

Jefferson Smurfit Corporation and United Paperworkers International Union, AFL-CIO, and its affiliated Local 1009

United Paperworkers International Union, AFL-CIO, and Locals 1009, 1973, and 98 and Jefferson Smurfit Corporation. Cases 9-CA-27380 and 9-CB-7570-1, -2, -3, -4

May 17, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On October 21, 1992, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent Union filed exceptions and supporting briefs, and the Respondent Employer filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, United Paperworkers International Union, AFL-CIO; and its Locals 1009, 1973, and 98, their officers, agents, and representatives, shall take the action set forth in the Order.

¹ The Respondent Unions assert that the judge's blanket discrediting of all union witnesses constitutes evidence of his bias and prejudice. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and have found neither evidence of bias on the part of the judge nor any basis for reversing his credibility findings.

The judge referred in some places to "Union negotiator Hope." We note that Hope was the Employer's negotiator, but we find that this inadvertent error does not affect the correctness of the judge's decision.

² In adopting the judge's conclusion that this case is controlled by the Board's recent decision in *Paperworkers Local 620 (International Paper Co.)*, 309 NLRB 44 (1992), we specifically note the finding there, at JD slip op. at 29, that that case was distinguishable from *Steelworkers Local 2556 (Lynchburg Foundry)*, 192 NLRB 773 (1971), *enfd.* 80 LRRM 2415 (4th Cir. 1972), owing to the unique circumstances presented in that earlier decision. Accordingly, we find no merit in the Respondent Unions' exceptions premised on an application of *Lynchburg Foundry*.

Carol L. Shore and James R. Schwartz, Esqs., for the General Counsel.

Thomas M. Hanna and Ralph E. Kennedy, Esqs., for the Respondent Employer.

Lynn Agee, Esq., for the Respondent Unions.

DECISION

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges and amended charges were filed in Case 9-CA-27380 on March 22, May 10, and July 19, 1990. An amended complaint issued on July 30, 1990. Unfair labor practice charges and amended charges were filed in Cases 9-CB-7570-1 through -4 on March 1 and April 11, 1990. An amended complaint issued on January 9, 1991. An order consolidating the above cases issued on February 6, 1991.

General Counsel alleges in the "CA" case that United Paperworkers International Union and its affiliated Local 1009 represent an appropriate bargaining unit of employees at Respondent Employer Jefferson Smurfit's Lockland, Ohio facility; that the prior collective-bargaining agreement between the parties pertaining to this unit was effective by its terms from November 1, 1986, to November 1, 1989; that negotiations for a new agreement commenced in September 1989; that on or about March 9, 1990, Respondent Employer unilaterally implemented its "final" contract offer which caused changes in mandatory subjects of collective bargaining; that on or about April 8, 1990, Respondent Employer "locked out" the Lockland unit employees; that Respondent Employer's implementation of its "final" contract offer violated Section 8(a)(1) and (5) of the National Labor Relations Act; and that Respondent Employer's "lockout" violated Section 8(a)(1) and (3) of the Act.

General Counsel alleges in the "CB" cases that Respondents International Union and its affiliated Locals 98, 1009, and 1973 are the exclusive bargaining representatives of Employer Jefferson Smurfit's employees in separate appropriate units at its Norwood, Lockland, and Middletown, Ohio facilities, respectively; that Respondent Unions have demanded, as a condition of consummating any collective-bargaining agreement, that all collective-bargaining agreements concerning the Employer's Norwood, Lockland, and Middletown units be approved through a pooled voting ratification procedure; that the pooled voting ratification procedure is not a mandatory subject of collective bargaining; that Respondent Unions' insistence upon the pooled voting ratification procedure inherently delayed the completion of the collective-bargaining process and preconditioned acceptance of one bargaining unit's collective-bargaining contract upon approval of other bargaining units; and that Respondent Unions thereby violated Section 8(b)(3) of the Act.

Respondent Employer denies violating the Act as alleged. Respondent Employer admits the implementation of its "final" contract offer at Lockland "but states that implementation was brought about by reason of impasse and [the Unions'] unlawful conduct," including, *inter alia*, "bargaining in bad faith with no intent to reach agreement"; utilizing "stalling tactics" and "spurious demands for information"; "demanding that all collective bargaining agreements at Respondent's Lockland facility, among others, be approved through a pooled voting procedure"; "use of a pooled voting procedure which precluded meaningful negotiations for a period of more than eight months"; and "misconduct [on] the part of employees . . . engaging in acts of sabotage and work slowdowns." Respondent Employer admits the "lockout" but alleges, *inter alia*, that "it was a legitimate measure to counter any enhancement of [the Unions'] economic

power through the implementation of the pooled voting procedure and its refusal to engage in meaningful negotiations"; and "the lockout was a legitimate exercise of . . . economic resources during collective bargaining."

Respondent Unions deny violating the Act as alleged and state, inter alia, that the Unions' "pool voting . . . is protected by the First Amendment" and, further, Section 8(d) of the Act "prohibits the National Labor Relations Board from finding a violation because the Union[s] utilized voluntary pool voting to prevent the signing of an agreement that would require the making of a concession."

Hearings were held on the issues raised in Cincinnati, Ohio, on February 24–27 and March 9 and 10, 1992. Upon the entire record in this proceeding, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

The Employer is engaged in the production of paper and related products at some 160 facilities located throughout the United States. The International Union and its affiliates represent employees of the Employer in separate appropriate units at some 61 of its facilities, including the three separate units involved in this consolidated proceeding at Lockland, Middletown, and Norwood, Ohio.¹ The prior separate collective-bargaining agreements between the parties at Lockland, Middletown, and Norwood were scheduled to expire by their own terms on November 1, 1989 (G.C. Exh. 2), June 1, 1990 (G.C. Exh. 16), and March 7, 1990 (G.C. Exh. 18), respectively. Negotiations for a new agreement at Lockland started on September 29, 1989. Previously, however, during May and June 1989, Respondent Locals 98, 1973, and 1009 had entered into the pooled voting agreements challenged in this proceeding (G.C. Exhs. 24, 25, and 26).

Counsel for General Counsel argues that "Respondent Unions violated Section 8(b)(3) of the Act by utilizing a pooled voting ratification procedure pursuant to Respondent International Union's constitution which unlawfully delayed ratification of collective-bargaining agreements with the Employer. Respondents' pooled voting ratification procedure by its very nature inherently delays completion of the bargaining process at each facility and effectively preconditions the acceptance of one bargaining unit's contract upon the acceptability of contracts negotiated by pool members elsewhere." Counsel for General Counsel further argues that Respondent Employer "unlawfully implemented its final contract offer [at Lockland] prior to reaching impasse in negotiations"; "unlawfully locked out [the Lockland] employees in furtherance of such implementation"; and was not "privileged to engage in the lockout in response to the Unions' . . . pooled bargaining strategy or in response to . . . an alleged slowdown or acts of sabotage by employees."

Counsel for the Employer argues that it "bargained to impasse before implementing its final offer" at Lockland; the Unions' "belated" and "spurious" "information requests" did not deprive the Employer of its right to implement its "final offer"; and in any event the "Unions' conditioning their acceptance of an agreement in the Lockland unit upon

agreements being reached in Middletown and Norwood released the Employer" of its obligation to bargain to impasse before implementation. Counsel for the Employer further argues that its "lockout" at Lockland was a "legitimate response to the employees' slowdowns and sabotage"; and in any event its "lockout" did not violate the Act "because there is no evidence of anti-Union motivation."

Counsel for the Unions argues that "the pool voting procedure is an economic weapon used in response to an industry's concessionary bargaining stance. The pool voting procedure at issue was democratically adopted by the Union's membership at convention and democratically implemented by its executive officers. It is merely a bargaining tool, an economic weapon to be utilized by labor at the local level to gain leverage in the power struggle against the corporation's concessionary bargaining assault."

The evidence adduced pertaining to these and related contentions of the parties is summarized below.

A. Locals 98, 1009, and 1973 Adopt the International Union's Pooled Voting Ratification Procedure

The constitution of Respondent International Union provides in article 15 for the ratification of collective-bargaining agreements. Section 2 of article 15 states:

Negotiations for collective bargaining agreements shall be subject to supervision by, and their terms, conditions and termination shall be subject to the approval of, the International president.

In August 1988, the International Union amended article 15 of its constitution to add the following section 4:

In some instances, Locals may choose to engage in coordinated bargaining to enhance their bargaining strength. In order to assure that bargaining is meaningful and orderly, it will be necessary to allow pool voting with the supervision of the president under Art. 15, Section 2. Should a group of Locals choose this course of action, the following procedures apply:

1. Participating Locals shall announce their commitment to allow their votes on a collective bargaining agreement to be pooled with other Locals making the same commitment.

2. The Locals shall agree on major issues they wish to pursue in collective bargaining.

3. Each Local shall continue its independent decision making in their separate bargaining units.

4. Votes taken on contract proposals will be tallied at each location. The results will then be sent to the International president who will tally the pooled votes. The existence of a contract will be governed by Art. 15, Section 1 of the constitution.²

² Respondent International Union, in adding sec. 4 to art. 15, as quoted above, asserted in the resolution of its executive board, inter alia,

the NLRB has failed to protect American workers' collective bargaining rights; . . . employers in the last decade seized on the government hostility toward unions to achieve concessions in bargaining by locking out employees and permanently replacing them during strikes; . . . the entire American labor move-

¹ Respondent Unions are admittedly labor organizations as alleged. Respondent Employer is admittedly an employer engaged in commerce as alleged. Respondent Unions admittedly represent the three separate appropriate units involved herein as alleged.

In the instant proceeding, Respondent International Union and its affiliated Locals 1009, 1973, and 98 have been and are the exclusive bargaining representatives of separate appropriate units of Jefferson Smurfit's employees at its Lockland, Middletown, and Norwood, Ohio facilities, respectively. The separate collective-bargaining agreements between the parties at Lockland, Middletown, and Norwood were scheduled to expire by their own terms on November 1, 1989, June 1, and March 7, 1990, respectively.

Gerald Johnston, International Union vice president and regional director, acknowledged that there was a "a council meeting between Paperworkers Locals representing Smurfit" about April or May 1989, and "the three Locals involved in this proceeding then decided to engage in pool bargaining or coordinated bargaining pursuant to that provision of the constitution." The three Locals thereafter executed "coordinated bargaining agreements" which were accepted by Johnston. See General Counsel's Exhibits 24, 25, and 26. It was agreed that, in accordance with the International Union's constitution,

[Each] Local . . . is committed to allow their votes on a collective bargaining agreement to be pooled with the [other two Locals] making the same commitment.

Votes taken on contract proposals will be tallied at each location. The results will be sent to the International president who will tally the pooled votes. The existence of a contract will be governed by Art. 15, Section 1, of the constitution.

The agreements further recite the "present major bargaining issues" as

1. Retain current premium pay.
2. No concession on insurance.
3. All retirement increases must contain past and future services.
4. Length of all contracts be the same.

Larry Richardson, a servicing representative for the International Union, testified that "the Local Union officers or executive boards of each of these Local Unions [had] meetings or discussions jointly and together . . . to discuss these issues" when the "Local Unions were considering the pool"; that "representatives from . . . the other two Locals were present" at "Local Union meetings [when] the pool voting issue was discussed"; and that, with respect to "how to get out" of a "pooled voting arrangement,"

I don't recall that there were any questions on how to get out of the pool voting arrangement. . . . I knew that everything was subject to the interpretation of the International president

Johnston testified that the pooled voting ratification procedure as adopted by the three Locals "would require a majority of the [total] ballots cast to have a ratification of a contract in any of these three facilities." The International president "doesn't count the complete tally until all the Locals have voted" "so . . . he can't declare whether there has been an acceptance or rejection until all Locals have voted."

ment agrees that alternative economic weapons are needed in order to secure bargaining strength for unions

"Pool voting, in a sense, if administered and drawn out to the end, would be saying that the Company would be having to satisfy in some form a larger number [of] people in their operation." A single local with a large voting membership could, under this arrangement, prevent the existence of a ratified contract at all three separate units.

And, as for a local getting out of or ending a "pool voting" arrangement, Johnston testified:

If I call the president, which I do and I have, and explain to him what I am doing, and if he does not object, that authority is mine. I guess that I have a lot of authority as a vice president that is not spelled out in writing, subject to the approval of the president. And, if he doesn't disapprove, then I have a lot of flexibility.

As discussed more fully below, negotiations for a new collective-bargaining agreement for the Lockland unit commenced on September 29, 1989. Bargaining did not commence for the Norwood and Middletown units until January 29, 1990, and April 24, 1990, respectively. Richardson acknowledged that he did not "give the Company any notice that there was a voting pool in existence when [the Union] began negotiations at Lockland." And, Johnston claimed that "I don't know that I had an obligation to say what the internal affairs of this International Union is to a corporation." Johnston added:

I believe my testimony was that through off the record meetings or through phone conversations at one point or another the Company was well aware of pool voting through me.³

Thomas Hope, the Employer's process development manager, testified that prior to the first bargaining session with the Union for the Lockland unit on September 29 the Employer had "mysteriously" received an "unofficial" copy of a "coordinated bargaining agreement" (G.C. Exh. 3); that he later raised at the September 29 bargaining session the Employer's concern over a "hidden agenda" on the part of the Union; and that he could recall no "response" from the Union to his inquiry. James R. Cain, the Employer's manager of industrial relations, subsequently wrote International Union Vice President Johnston on November 8, 1989, after the eighth bargaining session at Lockland, stating, inter alia (G.C. Exh. 7),

It has come to my attention that the UPIU and three of its Local Unions, under your leadership, have made a determination to engage in coordinated bargaining . . . concerning contracts at [the] Lockland, Middletown and Norwood, Ohio facilities. If this is the case, then the purpose of this letter is to demand certain information . . . :

1. The identity of the Local Unions involved.
2. The . . . plants involved.
3. When the Union intends to vote upon the Company's final offer with respect to each . . . plant. Specifi-

³ Counsel for General Counsel acknowledged that General Counsel is not alleging here an 8(b)(3) violation predicated upon any "failure to disclose the ratification process." See Tr. 289 to 290.

cally, do you intend to delay voting until contracts at all three locations have been negotiated.

4. Set forth all subjects of collective bargaining which the Union seeks to make identical or similar throughout all . . . plants involved.

5. The methodology the Union intends to employ for purposes of voting at all . . . plants.

6. Any other matter the Union seeks to make common among [the] plants.

Cain requested a prompt response since negotiations at Lockland were scheduled to resume for the ninth session on November 17.

Johnston responded to Cain's letter by letter dated November 17 (G.C. Exh. 8), identifying the three Locals and units involved, and stating:

Voting on collective bargaining agreements will be exactly as we have done in the past. However, at the conclusion of the votes in the respective units, those votes will be pooled. The Union does not intend to seek identical or similar items in negotiations. However, it is the Union's intention to resist concessions. I do not understand your request in paragraph 5. Would you please clarify your request? I know of no other matter the Union seeks to make common among [the] plants, other than to resist common concessions. . . . Would you please advise me as soon as possible of any similar or identical concessions which you are seeking in contract language or benefits with regard to the above locations.

Cain wrote Johnston on November 28 (G.C. Exh. 9), asking, *inter alia*, "Does this mean that we won't know whether we have a contract at Lockland until we have concluded bargaining at Middletown and Norwood as well?" Cain also explained his question 5, recited above, and noted:

I will respond to your questions concerning contract language and benefit concessions at both Middletown and Norwood as soon as we have made our decision regarding what will be put forth on the bargaining table. At this point in time, the Norwood contract does not expire until March and the Middletown contract in June and, therefore, it would be premature for us to reach such decisions so far in advance of bargaining.

Johnston replied to Cain's question ("Does this mean that we won't know whether we have a contract at Lockland until we have concluded bargaining at Middletown and Norwood as well?") in the "affirmative" in a letter dated December 19 (G.C. Exh. 10). The parties, as discussed below, had completed their 11th bargaining session at Lockland on December 6.

Subsequently, shortly after unfair labor practice charges had been filed in this proceeding, counsel for the Unions explained to counsel for the Employer in a letter dated March 15, 1990 (R. Exh. 5):

[A]t the conclusion of the [contract ratification] vote at each Local, the ballots and tally of those ballots are sent to the International president, who in turn will count all of the votes after the last Local has voted. If there is an affirmative vote of the total, each one of the Locals who had a favorable vote in their location will

have a binding collective bargaining agreement. Any Local who had a negative vote for the collective bargaining agreement will be free from the pool and may continue their bargaining or form another pool. If there is a negative vote of the total pool votes, then there will be no agreement at any location.

And, during the later Norwood contract negotiations, as Employer Labor Relations Manager Ronald Hackney testified, the Employer made its "final" contract offer on June 17, 1990; "there was a deadline on that"; and International Union Representative Johnston "made the comment that he wasn't too concerned about the deadline because Norwood was in a pool anyway and you can't have a pool until all the votes are in."

B. The Differences Between the Lockland, Middletown, and Norwood Unit Facilities

The Lockland unit includes the Employer's some 400 production, maintenance, and truckdriver employees in that facility. Lockland consists of a mill which manufactures heavy boxboard used by the Employer's converting plants to make cartons and a converting or carton plant which makes cartons. The Middletown unit includes the Employer's some 350 production and maintenance employees, excluding litho employees, in that facility. Middletown consists of a mill which manufactures light boxboard and a converting or carton plant. The Norwood unit includes the Employer's some 110 production and maintenance employees in that facility. Norwood manufactures plastic heat transfer labels and machinery to attach those labels.

The Employer acquired these three unit facilities from Diamond International in 1982. Lockland is some 35 miles from Middletown; Norwood is some 50 miles from Middletown. Respondent International Union and Local 1009 represent the Lockland unit employees. The prior collective-bargaining agreement between these parties was to expire on November 1, 1989. Respondent International Union and Local 1973 represent the Middletown unit employees. Unlike Lockland, where all the hourly employees are represented by Respondent Unions, printing employees at Middletown are represented by the Graphic Communications International Union. The prior collective-bargaining agreement between the parties was to expire on June 1, 1990. And, Respondent International Union and Local 98 represent the Norwood unit employees. The prior collective-bargaining agreement between the parties was to expire on March 7, 1990.

The Lockland and Middletown facilities are a part of the Employer's folding carton and boxboard division. The Lockland mill, however, is a much older facility than Middletown, using turn-of-the-century-design machines. Middletown mill has modern state-of-the-art equipment. In contrast, Norwood is a part of the Employer's consumer packaging division. Norwood produces plastic heat transfer labels and the machinery which affixes the labels to containers. As Norwood Manufacturing Manager Thomas Clifford explained, there is no boxboard mill at Norwood; Norwood does not produce anything other than heat transfer labels; and Norwood does not use any boxboard product. Employer Process Development Manager Thomas Hope testified that Norwood "is a stand alone business" and "was not involved in the premium pay issue" as it affected Lockland and Middletown.

And, Employer Labor Relations Manager Ronald Hackney similarly explained that “elimination of premium pay” was not on the bargaining agenda at Norwood as it was on the agenda at Lockland and Middletown in 1990, because

[Norwood is] not a rotating shift plant . . . you don’t have four shift rotations.

In short, “premium pay” is not “a significant issue” with the parties at plants like Norwood where there are no “four shift rotations” over a 24-hour period 7 days a week.

The Lockland mill manufactures a thicker or heavier boxboard than is produced at Middletown. Lockland Mill Manager Robert McPherson explained that if Middletown mill attempted to make the heavier boxboard produced at Lockland, Middletown would be “stretching their manufacturing capability.” And, Lockland cannot “make the smaller . . . lighter ranges of board that Middletown makes.” McPherson noted:

[W]e make product, for example, for a customer called Crescent, which no other mill in our division has been able to successfully reproduce, Middletown included.

Employer Process Development Manager Hope testified that most of the boxboard manufactured at the Lockland mill is sold to the Lockland folding carton plant. Lockland Mill Manager McPherson explained that Lockland mill also sells about 5 percent of its boxboard to Middletown carton which makes it into cartons for a customer named Gilster.⁴

Employer Sales Manager James Hammond testified that the Lockland converting or carton plant makes cartons starting “with a roll of paper” using “in-line gravure presses,” whereas “all of Middletown’s printing presses are sheet fed offset and all their cutters are sheet fed cutters.” The cutting operations at the two facilities are different; it is apparently impossible to print in one plant and cut in another; and Lockland apparently cannot glue boxes for Middletown. Hammond testified that there is no exchange of machinery or equipment between Lockland and Middletown at least with respect to “any major pieces of equipment”; “it would be very difficult for Middletown to run any of the cartons produced at Lockland”; “I’m not aware of Lockland ever having produced any cartons for Middletown”; “I’m not aware of any” cartons being produced at Middletown for Lockland; “the cartons that are run at Lockland could not be done in Middletown”; and during the “lockout” at Lockland in 1990 its carton work was not “transferred to Middletown.” Hammond explained that “work” cannot “under normal circumstances” “be transferred from one plant to another” because “there are customers who have qualification

requirements that plants have to meet” resulting in customer “certification” which may take “years” to obtain.⁵

Employer Sales Manager Hammond further testified that the Lockland carton plant “primarily manufactures powder detergent cartons and . . . some french fry cartons for McDonalds.” Middletown carton plant “primarily produces dry food cartons, such as cereal boxes and salad boxes and dry salads and things of that sort, some fast food such as Wendy’s and some household cartons such as deodorizers, . . . [it] makes cartons for those products.” And, each brand requires different boxes and labels. In short, this is not the type of product where an employer can readily or practically send the product to another facility to be converted or made into cartons for its specific customers.

In addition, this record shows no significant transfer or exchange of bargaining unit employees, no significant transfer of bargaining unit work, and no significant interchange of machinery and equipment among the three separate bargaining units involved in this proceeding. Employer Process Development Manager Hope testified that he was unaware of any transfer of machinery between Lockland and Middletown or any transfer of bargaining unit personnel between these two facilities “on a regular basis.” Hope explained that an employee “working on a paper machine at Middletown” would not “have the skills to go occupy an equivalent position on a boxboard machine at Lockland” “without some training,” and there is no “exchange of product between Lockland and Middletown.” Employer Labor Relations Manager Hackney also knew of no exchanges of equipment or transfers of employees between Lockland, Middletown, and Norwood. And, Employer Sales Manager Hammond testified that there was no exchange of hourly employees between Lockland and Middletown or the exchange “major pieces of equipment.” Hammond added that “Lockland could possibly produce some of the cartons run in Middletown”; “it would be very difficult for Middletown to run any of the cartons produced at Lockland”; and “I’m not aware of Lockland ever having produced any cartons for Middletown” or Middletown “produc[ing] any cartons for Lockland.”⁶

As noted above, Lockland and Middletown are assigned to the Employer’s folding carton and boxboard mill division. Norwood, however, is assigned to the Employer’s consumer packaging division. The three facilities are separately supervised; however, as Lockland mill plant manager Robert McPherson explained,

[U]p until January 1, 1991, we shared common management in a lot of areas, certainly the same general manager. So, I report to the general manager at Middletown as did the plant manager [there].

⁴ Compare the testimony of International Union Servicing Representative Larry Richardson that “Middletown was the Lockland mill’s biggest customer” (Tr. 767); the testimony of International Union Vice President Gerald Johnston that “50 percent of the stock would go from Lockland to Middletown carton . . . and also vice versa” (Tr. 632); and the testimony of former Local Union president, Tim Gilb, that “we [Lockland mill] probably make runs for Middletown carton plant, I’d say, once every two weeks, probably” (Tr. 1080).

⁵ Compare the testimony of International Union Vice President Gerald Johnston that “anything they run at the carton plant at Middletown they could put that order in the [Lockland] carton [plant], maybe with the exception of the printing part of it”; “they could do the same . . .”; “it’s done whenever the Company chooses to move an order around” (Tr. 633).

⁶ Hammond acknowledged that Lockland, because it has additional space, has stored some cartons produced by Middletown for Middletown’s White Castle customer. Middletown was charged a storage and handling fee. Hammond knew of no other “warehousing or inventory relationship . . . [between Lockland and Middletown] . . . during the past three or four years.” See Tr. 932 to 934.

Employee job classifications, wage rates, seniority rights, benefit packages, and other terms and conditions of employment vary significantly at the three separate units involved in this proceeding. Employer Process Development Manager Hope explained that “each of these locations” is “separately represented”; they do not engage in simultaneous bargaining; “wage scales” “vary by the job” but “there’s probably a dollar difference . . . being higher at Middletown than at Lockland”; “benefit packages” are not the “same”; and, as noted, the separate and different collective-bargaining agreements for the three facilities expired on different dates ranging from November 1, 1989, to June 1, 1990. See General Counsel’s Exhibits 2, 16, and 18, the prior collective-bargaining agreements for the Lockland, Middletown, and Norwood units. See also Respondent’s Counsel’s Exhibit 41, a compendium of the different contract terms for the separate Lockland and Middletown units (Tr. 1077 to 1078); and appendix “B” to counsel for Respondent Jefferson Smurfit’s brief, entitled “Conspicuous Contract Differences In Middletown, Lockland And Norwood.”

C. The Different 1989–1990 Contract Proposals and Separate Negotiations at the Three Unit Facilities

Employer Labor Relations Manager Ronald Hackney testified that James Cain is Jefferson Smurfit’s corporate manager of labor relations. Cain oversees labor relations managers who principally handle labor contract negotiations with the assistance of local management representatives. See Respondent’s Exhibit U, 1. Hackney explained:

Each individual location bargains on its own merits. So the way we formulate our objectives is a labor relations representative sits down with local management, formulate[s] [objectives], then we get division management to sign off on these and also corporate labor relations.

Hackney principally handled the 1989–1990 negotiations for a new agreement at Norwood in 1990. Thomas Hope, process development manager for the Employer’s boxboard and folding carton division, was specially assigned to handle the separate 1989–1990 negotiations for Lockland and Middletown. International Union Servicing Representative Larry Richardson handled the 1989–1990 negotiations at all three locations for the Unions with the assistance of local committee people.

Contract negotiations commenced at Lockland on September 29, 1989; at Norwood on January 29, 1990; and at Middletown on April 24, 1990. These negotiations, to the extent pertinent here, will be discussed in detail below. Process Development Manager Hope testified that the “primary objectives for the Lockland location” were as follows:

[O]n the folding carton side we were desirous of putting our rotogravure printing department on a four-tour operation, to allow us to work seven days if appropriate business demanded it. [A]t the same time . . . we wanted to eliminate Saturday and Sunday [premium pay]. [The Employer wanted to go to a four-tour operation there] in a very limited basis involving one department. On the boxboard mill side we were attempting to eliminate premium pay on Saturday and Sunday

if it didn’t involve over 40 [hours]. We were also interested in taking the medical coverage from a very expensive antiquated first dollar coverage plan to a comprehensive . . . preferred provider organization insurance plan. And we were also desirous of an automatic progression system that was specific to the mill. The present system allows individuals to freeze in a job classification, which would otherwise be a normal line of progression to a higher rated job and a more skilled job. And we were also desiring to put in a model pension plan at the Lockland facilities, both of them.

Hope further testified that “proposals the Company advanced at this September 29 meeting [for Lockland]” were not “the same proposals [which he] intended to advance at [subsequent] Middletown bargaining”; that he did not “enter into negotiations with any locked in positions with respect to Saturday and Sunday overtime for four-tour people” or “with respect to insurance coverage”; and that the Employer had “flexibility” and “we showed it through the negotiating process.” Hope noted that the Employer had “succeeded in eliminating Saturday and Sunday premium pay for four-tour workers at other plants in its system,” including “UPIU plants,” through a “variety of ways,” “from everything from cents on the hour to lump sum payments . . . [and] buying them out on a percentage basis,” that is, “a cash settlement in lieu of premium pay.” Hope also noted that the Union at Lockland was “asking for dental coverage” which the employees there did not have; however, Middletown had had such coverage for a considerable period of time.

Hope also served later as chief negotiator for the Employer at Middletown. Those negotiations did not start until some 7 months after negotiations had commenced at Lockland. Hope testified that the “primary objectives for the Middletown location” were as follows:

The primary objective was also to seek a more competitive posture as it related to the premium pay, Saturday and Sunday premium pay, for the mill workers. We also had a desire to change the insurance program and to try to bring them into a comprehensive preferred provider organization insurance plan. There were language items involved at Middletown negotiations also . . . that were specific to Middletown.

Hope explained that

the four-tour issue involved . . . the printing department at the Lockland folding carton plant, the mill people at the Lockland mill, and the mill people at the Middletown mill . . . ; it did not involve the Middletown folding carton [plant].

Hope denied that there was “a common agenda” with the Employer with respect to “premium pay” and “employee contribution to the insurance plan at all three of these plants,”

It was only common to the extent that it involved the same issue. But, how we ended up resolving them might be different.

Labor Relations Manager Hackney was the Employer’s chief negotiator for Norwood. Negotiations did not start there

until some 4 months after negotiations had commenced at Lockland. Hackney testified the Employer's "primary objectives" there were, as follows:

Well, of the proposals we had on the agenda, . . . [of] primary importance to us was to get some kind of relief . . . in the medical insurance area . . . ; to get relief on mandatory overtime for working Saturday overtime; . . . we had a proposal that we felt very strongly about requiring employees to work their scheduled shift before and after a holiday to qualify for holiday pay; . . . another important issue for us was a proposal requiring that the employees work their normal eight hour scheduled shifts to qualify for overtime premium on the weekends; [and] there were [issues concerning departmental versus plant seniority].

Hackney denied "any attempt by the Company to achieve the same modified comprehensive insurance program at Lockland and Norwood." Hackney acknowledged that "we were proposing . . . the ppo plan," "but again as far as contribution and deductible . . . I am not sure what . . . numbers [Lockland] had in their proposals." And, as stated, "in Norwood there was no proposal to eliminate premium pay" for four-tour employees because "it's not a rotating shift plant." See also General Counsel's Exhibit 5 (the Employer's Lockland 1989 proposals); General Counsel's Exhibit 6 (the Union's 1989 Lockland proposals); General Counsel's Exhibit 19 (the Employer's 1990 Norwood proposals); General Counsel's Exhibit 20 (the Union's 1990 Norwood proposals); General Counsel's Exhibit 30 (the Employer's 1990 Middletown proposals); and General Counsel's Exhibit 31 (the Union's 1990 Middletown proposals). As counsel for General Counsel observes in her brief in the "CB" case (p. 7),

It is undisputed that elimination of premium pay for employees with a four-tour work schedule at Lockland and Middletown and relief from "first dollar" medical insurance coverage at all three locations were among the Employer's objectives in bargaining. Respondent Unions, as their pooled voting arrangement demonstrates, were equally anxious to avoid concessions in these areas. Nevertheless, the Employer's proposals concerning premium pay and insurance coverage differed for each location and there were other issues of local significance and concern.

And, as International Union Representative Johnston stated in his letter dated November 17, 1989 (G.C. Exh. 8), "The Union does not intend to seek identical or similar items in negotiations. However, it is the Union's intention to resist concessions."⁷

⁷ As noted above, one of the stated objectives of the pooled voting ratification procedure in issue here was that "[l]ength of all contracts be the same." See G.C. Exhs. 24, 25, and 26. Counsel for the Union acknowledges in his brief (p. 25) that "the Locals made no proposals for common expiration dates."

D. The Employer and the Union Hold 14 Bargaining Sessions for Lockland from September 29, 1989, to February 7, 1990; the Employer Makes a Final Offer at Lockland on February 7; the Union Makes Detailed Information Requests at Lockland on February 7; the Employer Implements its February 7 Final Offer at Lockland on March 9; and the Employer Locks Out its Norwood Employees on March 24

At the first bargaining session for Lockland on September 29 (see R. Exhs. 17 and 1), the parties exchanged their contract proposals. See General Counsel's Exhibit 5 (the Employer's Lockland 1989 proposals) and General Counsel's Exhibit 6 (the Union's 1989 Lockland proposals). The existing contract was to expire on November 1. Employer negotiator Hope made clear to the Union that "we were willing to meet as often as we possibly could to conclude these Negotiations." Hope also made clear to the Union:

the Company's final offer would in fact have some kind of premium pay buyout; . . . some kind of comprehensive medical and ppo; . . . and would have a four-tour in the folding carton plant.

And, as Union Negotiator Richardson put it,

they [the Employer] had from day one said that they were going to have [proposed] premium pay [changes] there, health care [changes] there, whatever, forever, . . . until hell freezes over.

Richardson later added:

I was told at the bargaining table . . . first dollar [medical bill] coverage is history, . . . forget it, it's gone, it's not going to be here and it won't be here when these negotiations are over, . . . you will have a comprehensive health care plan.

Richardson made clear to the Employer at the bargaining table that "we have a problem" and "we are going to resist" the above proposals.

At the second bargaining session on October 10 (see R. Exhs. 17 and 1), the Employer explained, with handouts, its medical insurance and model pension plan proposals. The Union, following a 50-minute caucus, rejected both proposals. The Employer also explained its proposal pertaining to automatic progression. Further clarification and discussion ensued. The Union withdrew its demand pertaining to compensation for bargaining committee members during negotiations.

At the third bargaining session on October 11 (see R. Exhs. 17 and 1), the parties again discussed their proposals. The Employer agreed to a union proposal pertaining to grievances and rejected a number of other proposals. The Employer and the Union withdrew some of their proposals. As counsel for General Counsel in the "CA" case notes in his brief (p. 5), this meeting "resulted in the withdrawal of numerous language proposals by both sides."

At the fourth bargaining session on October 12 (see R. Exhs. 17 and 1), Employer Negotiator Hope pressed for additional meeting dates since the parties were approaching the contract expiration date. The Employer withdrew proposals

to modify contract language pertaining to overtime distribution, seniority, and wages. The Employer agreed to a union proposal pertaining to notice of job awards. The Union agreed that the "painter job" be moved to "building and grounds." The Union did not agree to withdraw any language proposals at this meeting.

At the fifth bargaining session on October 18 (see R. Exhs. 17 and 1), the parties discussed their proposals. The Union modified and withdrew some of its proposed modifications. The Employer also withdrew certain proposed changes. Thus, the Employer withdrew proposed changes pertaining to overtime and grievances. The Union withdrew proposed changes pertaining to notice of work, overtime, rate of pay for volunteer work, and the grievance procedure. There was apparently no agreement on any Company proposed changes. As reflected in the bargaining notes,

The Union [stated that it] is seriously concerned about the monetary proposals. [There are a] lot of concessionary proposals. Language issues [are] contingent on economic [issues].

Employer Negotiator Hope then "indicated that the Union isn't moving much." Hope asked for additional meetings, and Union Negotiator Richardson

said he could not meet on October 30 and 31 or anytime during the first week of November, [and] must leave at 12-12:30 PM on Thursday October 19 . . . and same for Tuesday October 24.

At the sixth bargaining session on October 19 (see R. Exhs. 17 and 1), as Employer Negotiator Hope testified,

Here, again, I asked for additional [meeting] dates from Richardson and beyond October 24; he was unavailable . . . ; and we just didn't have a very productive meeting . . . [which lasted only] until approximately noon.

The Union agreed at this session to a company proposal pertaining to overtime.

At the seventh bargaining session on October 23 (see R. Exhs. 17 and 1), Employer Negotiator Hope "recapped" the Company's "open" "language proposals." There were a "total of five Company [language] proposals" "open." The parties were "getting close to final positions on language." Hope also addressed "open" union proposals. The Union withdrew proposed changes pertaining to recall of laid-off employees and leave of absence. Hope requested additional meeting dates and Richardson stated that he "could not commit until October 24."

At the eighth bargaining session on October 24 (see R. Exhs. 17 and 1), Employer Negotiator Hope "again . . . asked if there wasn't a chance to firm up some [future meeting] dates," and Union Negotiator Richardson "reiterated again that he would not be able to until he made a couple of phone calls." Richardson assertedly "won't know" about "future dates" "until Friday October 27" In fact, the parties could not meet again until November 17.

Hope testified that he had stated at this session:

[W]e had experienced some severe interruptions to production and the loss of productivity in terms of tons produced per day at the boxboard mill, as well as down

time on our presses, as well as incidents of sabotage, and that we were very concerned about this.

Richardson acknowledged in his testimony first "instruct[ing] the employees at union meetings sometime in February that we could not be condoning or having anything like that going on."

In addition, as Hope explained,

[B]ased on the fact that there was no movement [on October 24], I indicated to them that as far as I was concerned I felt we were at an impasse on language. And I was going to be prepared the next time we meet to get to the economic issues.

The bargaining notes show Hope stating that the parties were "down to short strokes on language" proposals; "we are at the point [we] agree to disagree [and the] Company will move down to brass tacks."⁸

At the ninth bargaining session on November 17 (see R. Exhs. 17 and 1), Employer Negotiator Hope again complained about "the recent problems that have been occurring at the mill." Hope then moved into the Employer's economic proposals. The Employer proposed on its "first pass" a \$1000 ratification bonus payable \$500 in the first and \$500 in the second year of a 3-year contract; a 1-percent wage increase in the third year; an overtime buyout of four-tour workers in the amount of \$1000 for each year of the 3-year contract; an increase in sickness and accident benefits; an increase in accidental death and disability benefits; a pension benefit increase and a funded disability retirement plan; and a comprehensive medical insurance plan.

The Union, following a caucus, rejected all the Employer's monetary proposals. Hope explained that the Union wanted a retention of the benefit package. Union Negotiator Richardson testified:

[E]arly in negotiations I had responded by saying we are not giving up our premium pay. In November, I alluded to the Company that we could possibly entertain a buyout, but we weren't interested in a flat sum. We continued to negotiate. The Company continued to make offers on flat sums. I continued to resist giving up our premium pay. . . . I had no alternative proposals for premium pay.

And, as Hope further recalled, the Union also made no proposal with respect to the Employer's comprehensive medical insurance proposal; "they wanted that benefit to remain intact." Hope could not recall any of the Employer's some 160 plants, other than those involved in this proceeding, "that have first dollar insurance coverage."

The Union had proposed, inter alia, a "substantial" 10-percent wage increase. Hope stated:

I'm disappointed the Union has so much left on the plate. [I] haven't heard 10 percent since 1974.

The Union withdrew, inter alia, its "double time for Saturday proposal" and its "triple time for Sunday proposal."

⁸ As R. Exh. 1 shows, the Union denied "all open Company agenda items" and withdrew proposals pertaining to the "break in period" and "priority of contract books."

See also Respondent's Exhibit 1 which summarizes the Union's "action" at this session and the Respondent's Exhibit 17 bargaining notes which detail the action of the parties.

At the 10th bargaining session on November 28 (see R. Exhs. 17 and 1), as Employer Negotiator Hope testified, the Employer again made "economic proposals" "trying to move negotiations along" "even if it meant having to negotiate off [our] paper" or making new proposals without any substantial union response to prior company proposals. Hope testified:

[N]ormally when you get into monetary bargaining it generally goes pretty quick. And it was obvious in this case that we were being stonewalled on the Company's proposals in terms of insurance as well as premium pay. We gave them a new look here in terms of five years, as opposed to the three [year contract] that had been offered earlier. In wages we offered \$500 the first year, one and a half percent the second and third and fourth [years], and two percent the fifth [year]. On premium pay we offered \$1500 the second year, \$1500 the third year, and 25 cents to the base rate the fourth year. [O]n the carton side, for those individuals that would be required to work a four-tour operation . . . we were going to add 25 cents to their base salary. [W]e readjusted our comprehensive [medical] proposal in terms of employee contributions and resubmitted our proposal on sickness and accident and life. And we also resubmitted our proposal on pensions. [W]e did make movement in three of the areas.

In response, the Union was "still asking for a one year term" contract and now a "six percent wage increase." The Union made no response to the Employer's proposed premium pay buyout "in any fashion." The Union made no response to the Employer's comprehensive medical proposal "in any fashion." The Union "wanted to maintain first dollar coverage" and an increase in existing medical insurance plan benefits. The Union wanted to delete the "reasonable and customary" charge limitation from the existing medical insurance plan, eliminate the requirement of a "second opinion before surgery," and the Union wanted dental coverage and vision care and discount drug prescriptions.

At the 11th bargaining session on December 6 (see R. Exhs. 17 and 1), International Union Vice President Johnston was also present. Employer Negotiator Hope, as he testified,

explained to them [the Union] the fact that I was concerned, that we were almost on the verge of going into the next year; . . . it was evident to me that they were trying to protract the negotiations out; . . . they weren't making enough movement off their own paper; and it was serious, it was high time to get . . . this contract settled.

Hope again made a new economic proposal "before the Union [had] made one," as follows:

Our wage proposal was \$600 the first year, one and a half percent the second, third, and fourth years, and a two percent increase in the fifth year. [As for a premium pay buyout,] the proposal was \$3000 the first

year, and .25 to the base rate in the fourth year, and [in] the first year of the contract [a] .25 increase to the base rates for those carton people who are required to work on a four-tour. We resubmitted the Company's comprehensive medical ppo plan.

The Employer did not modify its proposals pertaining to pensions, comprehensive medical and sickness and accidental death and disability insurance.

The Union, as Hope explained, "did not respond" to the Employer's comprehensive medical proposal; was not "making any proposals pertaining to premium pay buyout"; and was retaining "its demands." The Union "still had 16 items" "at that point in time." The Union dropped its "vision" proposal; reduced its wage demand to 5-1/2; and increased its sickness and accident proposed benefits. Hope observed:

[T]hey were way off of what we considered to be a competitive wage offer and they could continue pulling back one tenth of one percent or one half of one percent forever at the rate they were going. [W]e had initially told them from day one that we intended to amend that part of the contract [pertaining to premium pay] . . . and we would negotiate on the basis of how it would be amended . . . , but the longer they continued to completely ignore the Company's position on it may lead the Company to do nothing more than give them a package in terms of the buyout of premium pay without their input, if that's the way they wish to proceed.

Hope expressed his concern "that we were not making any more progress and that we couldn't come up with dates to meet." The parties then broke off negotiations until "sometime after Christmas" "because there wasn't any progress and we appeared to be too far apart."

At the 12th bargaining session on January 5 (see R. Exhs. 17 and 1), as Employer Negotiator Hope testified, Hope made reference to International Union Vice President Johnston's letter of December 19 which finally acknowledged, in response to the Employer's inquiry on November 8, that the pooled voting procedure does in effect "delay voting until contracts at all three locations have been negotiated" and thus the parties would not know whether they had a contract at Lockland until bargaining was completed at Middletown and Norwood (see G.C. Exhs. 7 to 10). Hope stated that the pooled voting procedure was a "form of blackmail." International Union Vice President Johnston, also present at this session, responded that the Employer's "bargaining strategy" was a "form of blackmail." Hope replied that the Employer "did not have any hidden agenda . . . we hadn't started the negotiating process [at] Middletown . . . and developed strategies there." As noted, bargaining at Norwood did not start until January 29 and at Middletown until April 24.

The Employer, as Hope testified, made a new economic proposal to the Union:

We were still looking at a five year contract, and the new offer was \$600 in the first year of the contract, . . . the second year of the contract was one and a half percent, the third year was two percent, the fourth year

was two percent, and the [fifth] year was two percent. We increased [our offer pertaining to premium pay buyout] for mill shift workers to \$5000, and mill day workers and carton four tour people would be compensated at \$1500. . . . A flat \$1500 to the mill carton workers even though they had no premium pay as such. And the carton four-tour people, we made a proposal for the second year of .25 to their base salary and .15 the third year. Once again we proposed the comprehensive ppo plan, but revised our sickness and accident benefit [and on] life gave a new proposal of [a] \$500 increase . . . over four years.

Respondent's Exhibit 1 shows the "new offer" as including the above \$600, 1-1/2 percent, 2 percent, 2 percent, and 2-percent wage increases; \$5000 premium buyout for mill shift and \$1500 for mill carton with carton four-tour getting 25 cents in the second year and 15 cents in the third years; increases in sickness and accident and accidental death and disability; an increase in pension benefits; and shift differential increases for the second and third shifts.

The Union responded with a 2-year proposed contract and 4-and 4-1/2-percent wage increases each year. There were no provisions in this counterproposal pertaining to premium pay buyout and comprehensive medical. See also Respondent Exhibit 1 which shows, inter alia, the Union withdrawing proposals pertaining to pyramiding and modifying a holiday proposal. Hope announced that "we're miles apart"; the Employer "had a very competitive offer on the table"; and "be prepared the next time we meet" "we'll be ready for a final." The Union was unable to meet "sooner" than January 16.

At the 13th bargaining session on January 16 (see R. Exhs. 17 and 1), as Employer Negotiator Hope testified, the Employer again increased its economic proposal. The Employer offered a \$600 wage increase the first year, a 1-1/2-and 1/2-percent wage increase the second year, a 2-percent wage increase the third and fourth years, and raised the fifth year's increase to 2-1/2 percent. With respect to the premium pay buyout, the Employer now offered an increased \$6500 for the mill and \$2000 for mill/carton with 25 cents and 20 cents for carton four-tour people. Insurance, pension, and shift differential proposals remained the same. See the Company's "presentation" summarized in Respondent's Exhibit 17 for meeting 13.

The Union made no responsive proposals. International Union Representative Johnston was also present. The union representatives stated:

[T]hey thought that we were too far apart and they were requesting the services of the FMCS.

Hope protested that "we [had] offered FMCS early on" and "now at the 12th hour you want to call FMCS"; "this appeared . . . to be nothing more than another delaying tactic because they had not asked for it at all before"; and "we were beyond the expiration date of the contract." Nevertheless, following a caucus, the Employer "agreed to meet with the Union and the FMCS." Hope "would take care of . . . getting the services of the FMCS" and "attempted" to get future meeting dates from Union Negotiator Richardson. Richardson, however, became annoyed at being pressed for future meeting dates, and stated:

[he] can't do it . . . he didn't need to take this any longer . . . he got up from the table and proceeded to walk out of the meeting.

This session was scheduled for a full day. Richardson walked out abruptly about 11 a.m.

Union Negotiator Hope recalled that he "had made reference [at] the meeting prior to January 16 that [he] was going to be coming in January 16 with a final offer." Hope did not present a "final offer" on January 16 because "the Union [had] walked out." Hope, however, made clear to the Union on January 16 that the "next time we . . . meet" he would "give them the final" proposal. Hope explained:

[W]e were very close to the Company's final position. And certainly we were at impasse on language, and the Union wasn't bargaining. They were ignoring the Company's proposal on premium pay. They were ignoring the Company's proposal on four-tour and the carton plant. They were ignoring the Company's proposal on comprehensive medical. And those were the three issues they weren't addressing at all.

At the 14th bargaining session on February 7 (see R. Exhs. 17 and 1), the Federal mediator was present. International Union Vice President Johnston also attended. As the bargaining notes show (R. Exh. 17 for meeting 14), Employer Negotiator Hope opened by stating:

[We] have several tough issues facing us and we appear to be bogged down at this time. We last met on January 16, 1990. The Company presented a proposal at that time. However, the Union did not give a counter and requested another meeting with the FMCS present.

Union Negotiator Richardson responded:

The Company is correct in everything that was just said. We are going to do everything in our power to keep from having concessions in the labor contract.

Richardson then asked "questions" about the model pension plan earlier proposed by the Employer. Hope responded. And, Richardson made the following "Union proposal" (R. Exh. 17):

1. Three year contract.
2. Wages retro to 11-1-89. 3 1/2 percent [for each year].
3. Shift differential .20 in second year, .35 in third year.
4. Holiday qualifying language—see Union proposal #4. Union comments "We don't want to lose holiday pay."
5. Union proposal #9. Amend December 1 to December 20.
6. Union proposal #11—two tier—employees hired in the present contract level. Adjust rate by 10% every six months until 100% of the upper rate is reached.
7. Life insurance and AD&D—add \$1000 in every year of the contract.
8. S&A benefits—first year increase \$15, second year increase \$10, third year increase \$15.
9. Group insurance plan—add dental plan to existing program.

10. Pension plan—. . . add \$1.00 [each year].

11. Model pension plan – for early retirement we want 5 year vesting and install early reduction factor of 5%. 5 year vesting for disability retirement. Grandfather everyone who is disabled or becomes disabled so they will not lose benefits.

12. PTO and finisher classifications—place in one labor grade.

The Union also presented the Employer with a detailed three-page “information request” pertaining to pensions, health insurance, life insurance, shift differentials, vacations, holidays, premium pay, and seniority. See Respondent’s Exhibit 2. Hope protested that this “information request” “was once again nothing more than a delaying tactic on their part.” Richardson admitted that the Employer had supplied the Union with all information requested prior to February 7. Richardson could not credibly explain why he had waited until the 14th bargaining session to request this type of information. Richardson claimed, *inter alia*, that he wanted to be “creative” in making proposals. Richardson also claimed that “based on the bargaining history and what I was hearing I wasn’t convinced that premium pay and insurance was definitely not going to go away.” Richardson admittedly did not previously apprise the Employer that such a detailed information request would be forthcoming. Richardson admittedly did not tell the Employer on February 7 “why” he “needed each of the items listed.” And, Richardson was at a loss to explain the relevance of various items of requested information, and the Employer concededly had already supplied some of this requested information.⁹ Moreover, as Hope testified, the Union, during the remainder of 1990, had made no reference to or proposal predicated upon this requested information. Compare the testimony of Richardson (Tr. 733, 738, 741, 742, 745, 746, and 782 to 826), where he attempts to show later reliance upon some of this requested information.

As the bargaining notes for this session further show (R. Exh. 17), Employer Negotiator Hope announced:

From your proposal we are still too far apart and we will not take a caucus at this time. Instead, we are prepared to give you our final offer.

The Employer then presented to the Union its 11-page “final offer.” (See R. Exh. 3.) Union Negotiator Richardson claimed that he “didn’t know” “a final offer was coming at that meeting before [he] got there.” Elsewhere, he acknowledged that the Employer previously had stated that it was “doing about all [it] was going to do” and it was “in short string.” In fact, Richardson admittedly had been told that he “was going to get a final offer” on January 16. As noted, he had walked out of that session.

⁹The Employer, by letter dated March 14, 1990 (R. Exh. 6), subsequently furnished the Union with much of this requested information. The Employer again protested in its letter this “belated” information request which, in its view, was not made “in good faith.” In addition, the Employer disputed the “relevance” of certain requested information. The Union never attempted to demonstrate this disputed “relevance” and there is no claim made here that the Employer has failed to supply all necessary and relevant requested information.

The Employer’s “final offer,” summarized in Respondent’s Exhibits 17 and 1, included a 5-year term; an increase in wages for the second year from 1.5 to 2 percent; a new offer on premium pay of \$8000 for mill shift, \$3000 for day/mill carton with four-tour carton at 25 cents and 25 cents; insurance “basically same as 1/16 with medications”; S&A and AD&D the same as 1/5; and shift differential “increased” to 15 cents and 28 cents.

In addition, the Employer, by letter dated February 7, 1990 (R. Exh. 4), notified the Lockland unit employees:

At a negotiation meeting held February 7 . . . Jefferson Smurfit put forth its best and final offer concerning wages, hours and conditions of employment at the Lockland, Ohio plants.

The Corporation has been formally notified by letter dated December 19, 1989, that the Union may employ a “pool voting” process that would include the Lockland, Middletown and Norwood facilities.

The Corporation considers this “pool voting” to be illegal and if utilized would result in a delay of the voting process at the Lockland facilities.

The Employer attached the “principle features of the Company’s last and final offer” and urged the employees to contact their Local and International representatives to “express [their] views and to demand that this matter be submitted to a vote as soon as possible.”

Union Negotiator Hope testified that from February 7, when the Employer made its “final offer,” until April 8, when the Employer ultimately locked out the Lockland employees, the Union did not “advise” him of the “status of [his] final offer”; the Union did not indicate whether or not “they [had] voted [on] it”; the Union did not “offer any counters to [the] final offer”; the Union did not “ask to meet about [the] final offer”; and “even after [the Employer had] furnished requested information to the Union on March 14” the Union did not “formulate any proposals which they submitted . . . before this lockout.” The first meeting after February 7 was “an off the record meeting” requested by the Union for April 29. In addition, as Union Negotiator Richardson acknowledged, “the Lockland Local did not vote on the Company’s final offer of February 7.” The membership assertedly determined on February 12 “not to vote on that offer” because it “was so terribly bad.” Richardson admittedly did not apprise the Employer of this fact. And, as discussed below, the Union submitted no new proposals until May 11.¹⁰

Employer Industrial Manager Cain wrote International Union Vice President Johnston on February 13 (G.C. Exh. 11) that “it is our understanding that you do not intend to vote on the Company’s final proposal for the Lockland Ohio plant until bargaining has concluded at the Middletown and Norwood Ohio plants.” Cain stated that “such a delay con-

¹⁰Richardson was asked “What could the Company have done to its final offer to have made it a good enough proposal to submit to a vote?” Richardson responded:

Two things could have certainly been done. Premium pay and insurance, things along that nature could have been corrected, and I am sure it would have been voted upon [and] I am sure it would have been ratified. . . . [W]ithout a doubt, premium pay and insurance were certainly two big nuts on the agenda.

stitutes a violation of Section 8(b)(3) of the Act.” Cain asked the Union to “reconsider its position.” Cain warned that “if the Union has not voted upon the final offer by” February 24, the Employer would take “appropriate” action. Cain received no response to his February 13 letter and wrote Johnston and Richardson on February 26 (G.C. Exh. 12):

[W]e have reluctantly reached the conclusion that either we are at impasse and/or you are engaged in an unlawful refusal to bargain so that you can engage in pool voting at three plants whose contracts expire over an eight month span. In either event, it does not appear fruitful to engage in further bargaining and accordingly this is notice of contract termination. This letter is also to advise you that the Company intends to implement in full its last, best and final offer after this contract has expired [on March 9].¹¹

In the meantime, on January 29, the parties had commenced separate contract negotiations for Norwood. The proposals and bargaining issues involved there are outlined above. The Union had requested an extension of the March 7 contract expiration date. On February 12, Employer Labor Relations Manager Hackney apprised Union Representative Richardson (R. Exh. 20):

We believe your Union is engaged in a bad faith refusal to bargain by stalling negotiations at the Norwood and Lockland plants until June 1990 when the Middletown Ohio contract expires. You might wish to advise your members now to be prepared for a lockout or other appropriate action on the part of the Company after this contract expires on March 7, or any new date extended by agreement, if no new contract has been agreed upon.

And, the Employer similarly notified the Norwood employees on February 13 (R. Exh. 21):

It is our opinion that we would have an excellent chance of reaching a settlement in Norwood prior to the expiration date of the existing contract if Norwood was not involved in the Union’s coordinated bargaining efforts. There are significant differences among Lockland, Middletown and Norwood in terms of operations and in terms of issues or potential issues. We must bargain at Norwood based on the issues here and not based on issues at Lockland or Middletown. We have notified your Union that the Company is prepared to lock out or take other appropriate action if the Union is unwilling

to meet or if very significant progress in negotiations is not made by the agreed upon expiration date.

See also Hackney’s March 6 letter to Richardson (R. Exh. 23).

The Employer locked out the Norwood employees on March 24. Unfair labor practice charges were filed by the Union. The Board’s Regional Director found that the “Employer’s lockout was not unlawful” (R. Exh. 49) and, consequently, no claim is made here with respect to that lockout. See also Respondent Union’s Exhibit 7.

E. The Employer Locks Out the Lockland Employees on April 8

As stated, the Employer made its “final offer” at Lockland on February 7. It implemented its “final offer” there on March 9 and, subsequently, on March 24, locked out the Norwood employees. No further bargaining sessions for Lockland were then scheduled. No counterproposals for Lockland were then forthcoming from the Union. In addition, the Employer, also faced with what it perceived to be “slow-down and sabotage activities” at Lockland, notified the union representatives on March 22 (R. Exh. 7):

As you well know, October and November of 1989 were months which were marked by severe decreases in productivity both in the boxboard and carton plant as well as some 19 acts of sabotage. We had hoped we had seen the last of this illegal activity when production resumed its normal course in December 1989. Apparently, we were incorrect.

We have documented some 7 acts of sabotage in the month of February alone. In addition, production in the boxboard mill and the carton plant is rapidly falling off and we consider this to be a signal that a slowdown among the workforce is taking place. For example, to-date in the month of March, average daily production in the boxboard mill is almost 40 tons per day below the average for March 1989. In the five months ending February 1990, our production was 2272 tons less than the production in the equivalent five month period twelve months earlier.

The Employer enclosed a “summary” showing decreased “production” and increased “downtime.” The Employer warned:

[I]f the employees persist in slowing down production and in sabotage and we are unable to apprehend and punish the perpetrators, we will be left with no choice but to lock out our employees.

See also Respondent’s Exhibit 10.

The Union responded on March 23 (R. Exh. 8) requesting, inter alia, “specifics” and “underlying production records.” The Employer provided the Union a “summary of sabotage” and “production records” on March 29 (R. Exh. 9). Finally, on April 9, the Employer notified its Lockland employees (R. Exh. 11):

Effective April 8, 1990 at 7 PM, the Lockland mill and carton plants will cease operations. This is an official Company lockout which will continue until a new collective bargaining agreement is made.

¹¹ See also G.C. Exh. 13, a letter dated March 5, 1990, from International Union Vice President Johnston addressed to Employer General Managers J. C. Hammond and D. A. Johnston, stating, inter alia,

I received your February 26 letter on March 2nd. As you know, Larry Richardson will be at the George Meany school March 4 through March 9. I am dismayed at your statement that it would not be fruitful to engage in further bargaining. I request that you contact Larry Richardson upon his return from the George Meany school and schedule bargaining so that it may continue. I renew Larry Richardson’s request for information concerning insurance and pension plans that he requested which are necessary for the Union to bargain in an educated manner.

And see fn. 9, supra.

We have reluctantly concluded that a lockout is necessary because we have been unable to conclude a new labor contract and because some employees have engaged in a production slowdown. In addition, a number of incidents have occurred which cause us to suspect that some employees have engaged in sabotage. We believe it is not possible to conclude a new contract because of the UPIU's unlawful refusal to bargain and this includes the pooled voting procedure.

The Lockland boxboard mill plant manager, Robert McPherson, testified that "production started to decline [there] with the onset of negotiations" on September 29, 1989. Production records show that substantially fewer tons were produced in the mill for the 6 months preceding April 1990 than in the corresponding periods for the 2 prior years. Unplanned downtime for the 6 months preceding April 1990 was also significantly higher than in the corresponding periods for the prior 2 years. Defects and returns from customers for the 6 months preceding April 1990 were also significantly higher than in the corresponding periods for the prior 2 years. McPherson attributed the decline in production to the failure of employees to properly perform their duties and deliberate acts of sabotage. And, in addition, former Lockland carton plant manager, James Hammond, testified that he too was "experiencing . . . production problems at Lockland carton" commencing in 1989. There was a significant increase in budgeted downtime for both the gravure and finishing departments during the months preceding April 1990 when compared with statistics for the same periods during the prior 2 years. Hammond also attributed the increase in downtime to the failure of employees to perform properly their duties and deliberate acts of sabotage. See Respondent's Exhibits 28 to 37 and 46. See also the testimony of Tour Foremen Greg Porter (Tr. 1103 to 1132), Guy Rensi (Tr. 1159 to 1191), Dave Wedding (Tr. 1208 to 1216), and Herbert Palmer (Tr. 1231 to 1243).

Counsel for the General Counsel in the "CA" case acknowledges in his brief (pp. 10 to 12) that Respondent's Exhibits 31, 32, and 33 for the boxboard mill "show lower production in 1989—1990 than in the two previous years"; that "unplanned downtime increased, overall efficiency decreased and total machine hours decreased"; and that the Employer "has presented list upon list of incidents" including "ropes dropped, paper breaks, wax in the paper, wads of paper in the machines, levers shut off, [and] clutches burned out." Counsel for General Counsel acknowledges that "neither counsel for General Counsel nor the Union endeavored specifically to rebut or deny the incidents." Counsel for General Counsel instead argues that the "figures present at best a tenuous argument for increased downtime" during the prelockout period; the "gravure department downtime appears to fluctuate widely on a month to month basis"; the "finishing department downtime" figures are at least in part inconsistent with the Employer's position; and the Employer "cannot attribute responsibility to any particular person" for alleged acts of misconduct although "some [are] suspicious."

F. Negotiations Later Resume for Lockland; Agreement is Reached and Ratified

On April 12, 4 days after the Lockland lockout and some 12 days before negotiations were to commence for Middletown, Union Negotiator Richardson wrote Employer Negotiator Hope (R. Exh. 12):

The Union is ready and willing to negotiate in good faith with the Company for a fair and equitable labor agreement at this location [Lockland]. If you believe that negotiations would be of further benefit to the two parties, please advise. Contact me at your earliest convenience.¹²

Thereafter, on April 29, an "off the record" meeting was held at the Union's request for Lockland. Union Negotiator Hope recalled that International Union Vice President Johnston then "asked what our intentions were in regard to the Lockland contract." Hope explained:

I indicated that we were going to effect the premium pay buyout and that they had to posture themselves to accept that; . . . we were going to have a comprehensive medical and ppo plan; . . . we were going to have a four-tour operation in the carton plant.

Johnston "asked" if the Employer "couldn't give him some daylight in the [existing] two-tier wage system at the folding carton plant," and Hope agreed to "take that back to Management."

A second "off the record" meeting was held on May 5. Hope testified:

[W]e explained that on the premium pay buyout . . . the Company was willing to give the Union the "Chicago multiple formula" [a method of buying out over a number of years]; . . . we would be able to do something on the comprehensive medical, in terms of reducing our . . . losses and our deductibles, from what the Company's paper was; . . . we also indicated our parameters with regard to wage settlement as to percentages per year; . . . [and] we also indicated we were willing to make some movement on the two-tier system.¹³

The parties thereafter held their 15th bargaining session for Lockland on May 11. (See R. Exh. 17.) This was the first "on the record" meeting since February 7. As the bargaining notes show, Union Negotiator Richardson stated that "pri-

¹² See also the exchange of correspondence between the parties from April 23 to May 22, 1990, pertaining to the Union's April 23 "request . . . for inspection/observation of work that is being subcontracted that might be bargaining unit work" and related "information" (R. Exhs. 13 through 16). As noted, there is no allegation here that the Employer failed to supply to the Union requested relevant and necessary information.

¹³ Hope further testified that at this meeting (Tr. 281 to 282):

I indicated that we were still experiencing all kinds of slowdowns and stoppage incidents at the Middletown mill. And I was requesting his [Johnston's] assistance to have that stopped. He said he could take care of that with a phone call. Johnston denied making such a statement (Tr. 546).

mary concerns lie in the area of premium pay and insurance." Employer Negotiator Hope informed Union Negotiator Richardson that "you never gave a counter to our proposals." The Union responded with its counterproposal. (See R. Exh. 17.) Hope testified that "this was the first time, going all the way back to September 29, that the Union finally said they would agree to a premium pay buyout, but their request was [for] one hundred percent [of whatever the dollar cost was]." In other words, "whatever [the unit employees] lost by losing the [premium pay], they would get back in wages," which would not result in any savings to the Employer. The Union did not address at this meeting the Employer's comprehensive medical plan; "their proposal was still the retention of first dollar coverage." As the bargaining notes further show, Hope stated:

[The Employer] wanted a reasonable offer. You have ignored comprehensive medical. There are no 3 percent increases in mills. Haven't addressed the premium pay issue.

At the 16th bargaining session on May 15 (see R. Exh. 17), the Employer made further proposals including "additions to its final offer." The Union countered. (See R. Exh. 17.) Employer Negotiator Hope recalled that "this was the first time [the Union] had agreed to, if you will, seriously consider the Company's proposal" pertaining to a comprehensive medical plan. Nevertheless, as the bargaining notes show, Union Negotiator Richardson stated:

We are way apart. We negotiated concepts and it doesn't seem to be working. What has happened at other locations is not going to happen here.

No new meeting date was set.

The parties met again on May 29 at their 17th bargaining session. (See R. Exh. 17.) The parties discussed proposals. No agreements were reached. The parties met again on June 13 at their 18th bargaining session. (See R. Exh. 17.) Employer Negotiator Hope testified that the Employer's offer made at this session contained "substantial changes" from its prior offer, and he believed that the parties had reached "a tentative agreement." A "memorandum of understanding" was prepared setting forth the Employer's "final proposal." (See R. Exh. 18.) However, Hope was later informed that "the Union had not accepted our June 13 proposal." Hope did not know whether the Union had rejected this proposal separately or by pooled voting. At the time, Norwood like Lockland was still locked out and negotiations were continuing at Middletown.

The parties met again on July 12 at their 19th bargaining session. (See R. Exh. 17.) Employer Negotiator Hope testified that the Employer made some "isolated" changes in its earlier proposal. Hope again believed that the parties had reached a "tentative agreement." A "revised memorandum of understanding" was prepared. (See R. Exh. 19.) Hope was not informed whether the membership had voted on this "revised tentative agreement."

The parties met again on July 30 at their 20th bargaining session. A "revised memorandum of understanding" containing the Employer's "final offer" was again prepared. As General Counsel's Exhibit 14 shows, this "memorandum of understanding" "was accepted and ratified by the members

of Local 1009 on August 6, 1990." A new contract was signed effective from November 1, 1989, to November 1, 1993. (See G.C. Exh. 15.)

There was evidence presented pertaining to the contract ratification votes for the three unit facilities involved in this proceeding. Thus, Richard Meyer, former president of Local 1973 which represented the Middletown unit, testified that his Local first conducted a contract ratification vote on June 22, 1990, with a tally of 139 against and 101 for ratification. He presented this information to the International Union. Richard Moore, vice president of Local 1009 which represented the Lockland unit, testified that his Local first conducted a ratification vote on June 24, 1990, with a tally of 304 against and 16 for ratification. He too presented this information to the International Union. Later, on June 26, 1990, International Union Vice President Johnston notified the International president (G.C. Exh. 27):

Enclosed please find the results of the secret ballot votes of Local 1009 and Local 1973 taken on the contract offer from Jefferson Smurfit. The contract was rejected. Local 98 [for Norwood] has not taken their vote as of yet. The rejection tally from the other two Locals would offset any acceptance.

And, Oscar Reynolds, president of Local 98 which represented the Norwood unit, testified that the first contract ratification vote was conducted there on July 8, with a tally of 48 against and 47 for ratification. He too presented this information to the International Union.

A second round of ratification votes was later taken. Local 1973 for Middletown again rejected the Employer's proposed contract on July 23, 1990, by some five to seven votes. Local 98 for Norwood voted to accept the contract offer on August 1, 1990, by a tally of 77 to 22. And, Local 1009 for Lockland voted to accept the contract offer on August 6, 1990, by a tally of 212 to 122. International Union Vice President Johnston then recommended dissolution of the pool. The Employer was advised in writing on August 8, 1990, of the ratification at both Lockland and Norwood. (See R.U. Exh. 11.) Finally, on September 7, 1990, Local 1973 for Middletown ratified the contract proposal there by a vote of 117 to 110. Johnston then notified the International and commented: "This completes the coordinated pool consisting of Local 98, 1009 and 1973." (See R.U. Exh. 12.)¹⁴

¹⁴ The testimony and documentary evidence of record as detailed above is in large part uncontroverted. There are, however, some conflicts in testimony. I find the testimony of Thomas Hope, Ronald Hackney, Thomas Clifford, Robert McPherson, James Hammond, Greg Porter, Guy Rensi, Dave Wedding, and Herbert Palmer to be, insofar as pertinent here, credible and trustworthy. Their testimony is in significant part mutually corroborative, substantiated by uncontroverted documentary evidence, and substantiated by admissions of Respondents' witnesses, and they impressed me as reliable and trustworthy witnesses. On the other hand, the testimony of Gerald Johnston, Larry Richardson, Tom Gilb, Richard Meyer, Richard Moore, and Oscar Reynolds was at times incomplete, vague, and contradictory. Insofar as the testimony of Gerald Johnston, Larry Richardson, Tom Gilb, Richard Meyer, Richard Moore, and Oscar Reynolds conflicts with the testimony of Thomas Hope, Ronald Hackney, Thomas Clifford, Robert McPherson, James Hammond, Greg Porter, Guy Rensi, Dave Wedding, and Herbert Palmer, I find

Discussion

A. The Pooled Voting Ratification Procedure

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of his employees subject to the provisions of Section 9(a).” Section 8(b)(3), in turn, makes it an unfair labor practice for a labor organization or its agents “to refuse to bargain collectively with an employer, provided it is the representative of his employees, subject to the provisions of Section 9(a).” Section 9(a) provides for exclusive appropriate bargaining unit representation. Section 8(d) defines the obligation “to bargain collectively” as

the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party.

Counsel for General Counsel contends with respect to the “CB” cases that the pooled voting contract ratification procedure in issue here violates the above proscriptions of the Act. The applicable principles of labor law were recently restated in *Paperworkers Local 620 (International Paper Co.)*, 309 NLRB 44 (1992). There, the Board found that the pooled voting contract ratification procedure adopted by Respondent International Union and various of its Locals representing separate bargaining units of International Paper violated Sections 8(b)(3) and 8(d) of the Act “because the pool’s structure and operation impermissibly impose extra-

and conclude on this full record the testimony of the latter witnesses to be more detailed, complete, reliable, and trustworthy.

In particular, I find incredible here the vague, general, and contradictory assertions of Johnston, Richardson, and Gilb pertaining to the product relationship of the Lockland and Middletown operations. The careful, detailed, and documented testimony of the Employer’s witnesses, as recited above, is more complete and reliable. Likewise, I find incredible here Richardson’s assertions to the effect that he “didn’t know” “a final offer was coming at” the 14th bargaining session. Richardson elsewhere contradicted himself and the credible evidence of record is to the contrary. Further, Richardson could not credibly explain why he had waited until the 14th bargaining session to first disclose his detailed information request. His shifting and incomplete assertions for his belated advancement of this detailed information request, when assessed against the entire record, persuade me that the request was not made in good faith but instead was made to delay the bargaining process in compliance with the pooled voting ratification plan. And, I credit Hope’s testimony attributing to Johnston the statement that Johnston “could take care of” the alleged slowdown and stoppage incidents at Middletown “with a phone call.” I note that the detailed testimony of Hope has withstood the close scrutiny of counsel throughout this hearing and was substantiated in large part by undenied and uncontroverted testimony and documents.

In sum, I find and conclude that the testimony of Thomas Hope, Ronald Hackney, Thomas Clifford, Robert McPherson, James Hammond, Greg Porter, Guy Rensi, Dave Wedding, and Herbert Palmer is a more complete and reliable presentation of the pertinent sequence of events and relationships of operations than the testimony of Respondents’ witnesses.

neous nonbargaining unit considerations into the collective bargaining process.” The Board explained:

The pool runs afoul of the Act, not because of delay as such, but because its structure and operation permit wholly separate bargaining units, each voting on its own separate contract, to effectively veto another bargaining unit’s contract on the basis of extraneous considerations having no direct bearing on the substantive terms of the other unit’s contract. The result is a system that allows for refusal to sign an agreement on the basis of nonmandatory subjects of bargaining, i.e., subjects that do not concern the wages, hours, and working conditions of the unit covered by that agreement.

For the reasons stated below, I deem International Paper controlling here and would similarly find that Respondent International Union and its affiliated Locals 1009, 1973, and 98 have violated Sections 8(b)(3) and 8(d) of the Act.

Thus, as recited above, the Employer is engaged in the production of paper and related products at some 160 facilities located throughout the United States. The International Union and its affiliated Locals represent employees of the Employer in separate appropriate units at some 61 of its facilities, including the three separate units involved in this consolidated proceeding at Lockland, Middletown, and Norwood, Ohio. The prior separate collective-bargaining agreements between the parties at Lockland, Middletown and Norwood were scheduled to expire by their own terms on November 1, 1989, June 1 and March 7, 1990, respectively. Negotiations for a new agreement at Lockland started on September 29, 1989. Previously, however, during May and June 1989, Respondent Locals 98, 1973, and 1009 had entered into the pooled voting agreements challenged in this proceeding.

It was agreed that, in accordance with the International Union’s constitution,

[Each] Local . . . is committed to allow their votes on a collective bargaining agreement to be pooled with the [other two Locals] making the same commitment.

Votes taken on contract proposals will be tallied at each location. The results will be sent to the International president who will tally the pooled votes. The existence of a contract will be governed by Art. 15, Section 1, of the constitution.

The agreements further recite the “present major bargaining issues” as

1. Retain current premium pay.
2. No concession on insurance.
3. All retirement increases must contain past and future services.
4. Length of all contracts be the same.

International Union Vice President Johnston testified that the pooled voting contract ratification procedure as adopted by the three Locals “would require a majority of the [total] ballots cast to have a ratification of a contract in any of these three facilities.” The International president “doesn’t count the complete tally until all the Locals have voted” “so . . . he can’t declare whether there has been an acceptance or rejection until all Locals have voted.” “Pool voting, in a sense, if administered and drawn out to the end, would be

saying that the Company would be having to satisfy in some form a larger number [of] people in their operation.” A single Local with a large voting membership could, under this arrangement, prevent the existence of a ratified contract at all three separate units.

Negotiations for a new collective-bargaining agreement for the Lockland unit commenced on September 29, 1989. Bargaining did not commence for the Norwood and Middletown units until January 29 and April 24, 1990, respectively. Union Negotiator Richardson acknowledged that he did not “give the Company any notice that there was a voting pool in existence when [the Union] began negotiations at Lockland.” And, Johnston claimed that “I don’t know that I had an obligation to say what the internal affairs of this International Union is to a corporation.”

Employer Negotiator Hope testified that prior to the first bargaining session with the Union for the Lockland unit on September 29 the Employer had “mysteriously” received an “unofficial” copy of a “coordinated bargaining agreement”; that he later raised at the September 29 bargaining session the Employer’s concern over a “hidden agenda” on the part of the Union; and that he could recall no “response” from the Union to his inquiry. Cain, the Employer’s manager of industrial relations, subsequently wrote International Union Vice President Johnston on November 8, 1989, after the eighth bargaining session at Lockland, asking, *inter alia*,

[D]o you intend to delay voting until contracts at all three locations have been negotiated.

Cain requested a prompt response since negotiations at Lockland were scheduled to resume for the ninth session on November 17. Cain again wrote Johnston on November 28, asking, *inter alia*, “Does this mean that we won’t know whether we have a contract at Lockland until we have concluded bargaining at Middletown and Norwood as well?” Johnston replied to Cain’s question in the “affirmative” in a letter dated December 19. The parties had completed their 11th bargaining session at Lockland on December 6.

Subsequently, shortly after unfair labor practice charges had been filed in this proceeding, counsel for the Unions explained to counsel for the Employer in a letter dated March 15, 1990:

[A]t the conclusion of the [contract ratification] vote at each Local, the ballots and tally of those ballots are sent to the International president, who in turn will count all of the votes after the last Local has voted. If there is an affirmative vote of the total, each one of the Locals who had a favorable vote in their location will have a binding collective bargaining agreement. Any Local who had a negative vote for the collective bargaining agreement will be free from the pool and may continue their bargaining or form another pool. If there is a negative vote of the total pool votes, then there will be no agreement at any location.

And, during the later Norwood contract negotiations, as Employer Labor Relations Manager Hackney testified, the Employer made its “final” contract offer on June 17, 1990; “there was a deadline on that”; and International Union Representative Johnston “made the comment that he wasn’t too concerned about the deadline because Norwood was in

a pool anyway and you can’t have a pool until all the votes are in.”

As detailed above, plant operations, terms and conditions of employment, provisions of collective-bargaining agreements, proposed modifications of collective-bargaining agreements, unit composition and product varied significantly at the three separate units involved here. Thus, for example, as Norwood manufacturing manager, Clifford, explained, there is no boxboard mill at Norwood; Norwood does not produce anything other than heat transfer labels; and Norwood does not use any boxboard product. Employer Negotiator Hope testified that Norwood “is a stand alone business” and “was not involved in the premium pay issue” as it affected Lockland and Middletown negotiations. And, Employer Labor Relations Manager Hackney similarly explained that “elimination of premium pay” was not on the bargaining agenda at Norwood as it was on the agenda at Lockland and Middletown in 1990, because

[Norwood is] not a rotating shift plant . . . you don’t have four shift rotations.

In addition, this record shows no significant transfer or exchange of bargaining unit employees, no significant transfer of bargaining unit work, and no significant interchange of machinery and equipment among the three separate bargaining units involved in this proceeding.

On this showing, I find and conclude that here, as in *International Paper*, supra, Respondent International Union and its affiliated Locals 1009, 1973, and 98 have violated Sections 8(b)(3) and 8(d) of the Act. Here too, as explained in *International Paper*,

The pool runs afoul of the Act, not because of delay as such, but because its structure and operation permit wholly separate bargaining units, each voting on its own separate contract, to effectively veto another bargaining unit’s contract on the basis of extraneous considerations having no direct bearing on the substantive terms of the other unit’s contract. The result is a system that allows for refusal to sign an agreement on the basis of nonmandatory subjects of bargaining, i.e., subjects that do not concern the wages, hours, and working conditions of the unit covered by that agreement. [309 NLRB at 45.]

B. The March 9 Implementation of the Employer’s Final Contract Offer and the Ensuing Lockout

Counsel for General Counsel contends with respect to the “CA” case that Respondent Employer “unlawfully implemented its final contract offer [at Lockland] prior to reaching impasse in negotiations” and “unlawfully locked out [the Lockland] employees in furtherance of such implementation.”

It is settled law that an employer violates its statutory duty to bargain in good faith when it makes “unilateral changes in conditions of employment under negotiation”; for, as the court of appeals explained in *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968), an employer is only privileged to unilaterally implement such changes that “are reasonably comprehended within his pre-impasse proposals” “after bargaining to an impasse, that is, after good faith ne-

gotiations have exhausted the prospects of concluding an agreement"; there must be "no realistic possibility that continuation of discussion at that time would be fruitful." Of course, a union's "refusal to meet and bargain" with an employer "over terms for a new contract prior to the expiration of the old contract" may justify such "unilateral" action by the employer. See *AAA Motor Lines*, 215 NLRB 793 (1974). Moreover, as restated in *Louisiana Dock Co.*, 293 NLRB 233 (1989), reversed in part 909 F.2d 281 (7th Cir. 1990), a "union cannot be heard to protest [an employer's] unilateral actions [where] it was the union's own acts which foreclosed effective negotiations."

Further, with respect to the related lockout allegation, the Board majority made clear in *Harter Equipment*, 280 NLRB 597 (1986),

[A]n employer does not violate Section 8(a)(1) and (3) of the Act, absent specific proof of any anti-union motivation, by using temporary employees to engage in business operations during an otherwise lawful lockout, including a lockout initiated for the sole purpose of bringing economic pressure to bear in support of a legitimate bargaining position.

The Board noted:

[T]he absence of impasse does not of itself make a lockout in support of bargaining demands unlawful. *Darling & Darling Co.*, 171 NLRB 801 (1968), *enfd.* sub nom. *Lane v. NLRB*, 418 F.2d 1208 (D.C. Cir. 1969).

Compare: D.C. Liquor Wholesalers, 292 NLRB 1234 (1989), *enfd.* 924 F.2d 1078 (D.C. Cir. 1991), where the Board found,

The [employers'] behavior demonstrates an intent to deprive their employees of any opportunity to bargain meaningfully over changes it planned to make in their working conditions. We therefore conclude, as did the judge, that the [employers'] conduct . . . , in failing to bargain in good faith and in unilaterally implementing changes in terms and conditions of employment, violated Section 8(a)(1) and (5) of the Act.

We also agree with the judge that the lockout and replacement of employees, having been motivated by the same bad faith as the declaration of impasse, was similarly unlawful. They were part and parcel of a pattern which leads us to find that it was the [employers'] intent to avoid their bargaining obligations in violation of Section 8(a)(1) and (5). These actions also constitute discrimination against the employees in violation of Section 8(a)(1) and (3) of the Act.

Applying the foregoing principles of law to the essentially undisputed and credited evidence of record, I find and conclude that General Counsel has failed to sustain his burden of proving that the Employer unlawfully implemented its final contract offer at Lockland and unlawfully locked out the Lockland employees in furtherance of or support of such implementation.

Thus, as recited above, at the first bargaining session for Lockland on September 29, the parties exchanged their contract proposals. The Employer made clear to the Union:

[T]he Company's final offer would in fact have some kind of premium pay buyout; . . . some kind of comprehensive medical; . . . and would have a four-tour in the folding carton plant.

The Union made clear to the Employer that "we have a problem" and "we are going to resist" the above proposals. Indeed, the International Union and its three Locals involved in this proceeding had entered into a pooled voting contract ratification procedure agreement, found unlawful in this and related proceedings, which had stated objectives to "retain current premium pay," to make "no concession on insurance" and to have the "length of all contracts be the same."

At the fourth bargaining session on October 12, Employer Negotiator Hope pressed unsuccessfully for additional meeting dates since the parties were approaching the contract expiration date. At the fifth bargaining session on October 18,

The Union [stated that it] is seriously concerned about the monetary proposals. [There are a] lot of concessionary proposals. Language issues [are] contingent on economic [issues].

Hope then "indicated that the Union isn't moving much." Hope again asked unsuccessfully for additional meetings. At the sixth bargaining session on October 19, as Hope testified,

Here, again, I asked for additional [meeting] dates from Richardson and beyond October 24; he was unavailable . . . and we just didn't have a very productive meeting . . . [which lasted only] until approximately noon.

At the seventh bargaining session on October 23, Hope again requested additional meeting dates and Richardson stated that he "could not commit until October 24." At the eighth bargaining session on October 24, Hope "again . . . asked if there wasn't a chance to firm up some [future meeting] dates," and Richardson "reiterated again that he would not be able to until he made a couple of phone calls." Richardson assertedly "won't know" about "future dates" "until Friday October 27." In fact, the parties could not meet again until November 17.

Hope testified that he had stated at this session:

[W]e had experienced some severe interruptions to production and the loss of productivity in terms of tons produced per day at the boxboard mill, as well as down time on our presses, as well as incidents of sabotage, and that we were very concerned about this.

Richardson acknowledged in his testimony first "instruct[ing] the employees at union meetings sometime in February that we could not be condoning or having anything like that going on."

In addition, as Hope explained,

[B]ased on the fact that there was no movement [on October 24], I indicated to them that as far as I was concerned I felt we were at an impasse on language. And I was going to be prepared the next time we meet to get to the economic issues.

The bargaining notes show Hope stating that the parties were "down to short strokes on language" proposals; "we are at

the point [we] agree to disagree [and the] Company will move down to brass tacks.”

At the ninth bargaining session on November 17, Hope again complained about “the recent problems that have been occurring at the mill.” Hope then moved into the Employer’s economic proposals. The Union, following a caucus, rejected all the Employer’s monetary proposals. Hope explained that the Union wanted a retention of the benefit package. The Union made no proposal on premium pay. The Union also made no proposal with respect to the Employer’s comprehensive medical insurance proposal; “they wanted that benefit to remain intact.” Hope could not recall any of the Employer’s some 160 plants, other than those involved in this proceeding, “that [still] have first dollar [medical] insurance coverage.”

At the 10th bargaining session on November 28, as Hope testified, the Employer again made “economic proposals” “trying to move negotiations along” “even if it meant having to negotiate off [our] paper.” The Union made no response to the Employer’s proposed premium pay buyout “in any fashion.” The Union made no response to the Employer’s comprehensive medical proposal “in any fashion.” The Union “wanted to maintain first dollar coverage” and an increase in existing medical insurance plan benefits.

At the 11th bargaining session on December 6, Hope

explained to [the Union] the fact that I was concerned, that we were almost on the verge of going into the next year; . . . it was evident to me that they were trying to protract the negotiations out; . . . they weren’t making enough movement off their own paper; and it was serious, it was high time to get . . . this contract settled.

Hope again made a new economic proposal “before the Union [had] made one.” The Union, as Hope explained, “did not respond” to the Employer’s comprehensive medical proposal; was not “making any proposals pertaining to premium pay buyout”; and was retaining “its demands.” Hope expressed his concern “that we were not making any more progress and that we couldn’t come up with dates to meet.” The parties then broke off negotiations until “sometime after Christmas” “because there wasn’t any progress and we appeared to be too far apart.”

At the 12th bargaining session on January 5, Hope made reference to International Union Vice President Johnston’s letter of December 19 which finally acknowledged, in response to the Employer’s inquiry on November 8, that the pooled voting procedure does in effect “delay voting until contracts at all three locations have been negotiated” and thus the parties would not know whether they had a contract at Lockland until bargaining was completed at Middletown and Norwood. Hope stated that the pooled voting procedure was a “form of blackmail.” International Union Vice President Johnston, also present at this session, responded that the Employer’s “bargaining strategy” was a “form of blackmail.” Hope replied that the Employer “did not have any hidden agenda . . . we hadn’t started the negotiating process [at] Middletown . . . and developed strategies there.” As noted, bargaining at Norwood did not start until January 29 and at Middletown until April 24.

At the 13th bargaining session on January 16, as Hope testified, the Employer again increased its economic proposal. The Union made no responsive proposals. The union representatives stated:

[T]hey thought that we were too far apart and they were requesting the services of the FMCS.

Hope protested that “we [had] offered FMCS early on” and “now at the 12th hour you want to call FMCS”; “this appeared . . . to be nothing more than another delaying tactic because they had not asked for it at all before”; and “we were beyond the expiration date of the contract.” Nevertheless, following a caucus, the Employer “agreed to meet with the Union and the FMCS.” Hope “would take care of . . . getting the services of the FMCS” and “attempted” to get future meeting dates from Union Negotiator Richardson. Richardson, however, became annoyed at being pressed for future meeting dates, and stated:

[he] can’t do it . . . he didn’t need to take this any longer . . . he got up from the table and proceeded to walk out of the meeting.

Hope recalled that he “had made reference [at] the meeting prior to January 16 that [he] was going to be coming in January 16 with a final offer.” Hope did not present a “final offer” on January 16 because “the Union [had] walked out.” Hope, however, made clear to the Union on January 16 that the “next time we . . . meet” he would “give them the final” proposal. Hope explained:

[W]e were very close to the Company’s final position. And certainly we were at impasse on language, and the Union wasn’t bargaining. They were ignoring the Company’s proposal on premium pay. They were ignoring the Company’s proposal on four-tour and the carton plant. They were ignoring the Company’s proposal on comprehensive medical. And those were the three issues they weren’t addressing at all.

At the 14th bargaining session on February 7, the Union presented an oral counterproposal to the Employer. The Union also presented the Employer with a detailed three-page “information request” pertaining to pensions, health insurance, life insurance, shift differentials, vacations, holidays, premium pay, and seniority. Hope protested that this “information request” “was once again nothing more than a delaying tactic on their part.” Richardson admitted that the Employer had supplied the Union with all information requested prior to February 7. Richardson could not credibly explain why he had waited until the 14th bargaining session to request this type of information. Richardson admittedly did not previously apprise the Employer that such a detailed information request would be forthcoming. Richardson admittedly did not tell the Employer on February 7 “why” he “needed each of the items listed.” And, Richardson was at a loss to explain the relevance of various items of requested information, and the Employer concededly had already supplied some of this requested information. Moreover, as Hope testified, the Union, during the remainder of 1990, had made no reference to or proposal predicated upon this requested information.

Hope announced at the February 7 session:

From your proposal we are still too far apart and we will not take a caucus at this time. Instead, we are prepared to give you our final offer.

The Employer then presented to the Union its 11-page "final offer." In addition, the Employer notified the Lockland unit employees:

At a negotiation meeting held February 7 . . . Jefferson Smurfit put forth its best and final offer concerning wages, hours and conditions of employment at the Lockland, Ohio plants.

The Corporation has been formally notified by letter dated December 19, 1989, that the Union may employ a "pool voting" process that would include the Lockland, Middletown and Norwood facilities.

The Corporation considers this "pool voting" to be illegal and if utilized would result in a delay of the voting process at the Lockland facilities.

Hope testified that from February 7, when the Employer made its "final offer," until April 8, when the Employer ultimately locked out the Lockland employees, the Union did not "advise" him of the "status of [his] final offer"; the Union did not indicate whether or not "they [had] voted [on] it"; the Union did not "offer any counters to [the] final offer"; the Union did not "ask to meet about [the] final offer"; and "even after [the Employer had] furnished requested information to the Union on March 14" the Union did not "formulate any proposals which they submitted . . . before this lockout." The first meeting after February 7 was "an off the record meeting" requested by the Union for April 29. In addition, as Union Negotiator Richardson acknowledged, "the Lockland Local did not vote on the Company's final offer of February 7." The membership assertedly determined on February 12 "not to vote on that offer" because it "was so terribly bad." Richardson admittedly did not apprise the Employer of this fact. The Union submitted no new proposals until May 11.

Richardson was asked "What could the Company have done to its final offer to have made it a good enough proposal to submit to a vote?" Richardson responded:

Two things could have certainly been done. Premium pay and insurance, things along that nature could have been corrected, and I am sure it would have been voted upon [and] I am sure it would have been ratified. [W]ithout a doubt, premium pay and insurance were certainly two big nuts on the agenda.

However, as noted above, the Union, during the prior 14 bargaining sessions, would not make proposals pertaining to these "big nuts on the agenda" and in fact had agreed to resist in common these concessionary proposals.

Employer Industrial Relations Manager Cain, wrote International Union Vice President Johnston on February 13 that "it is our understanding that you do not intend to vote on the Company's final proposal for the Lockland Ohio plant until bargaining has concluded at the Middletown and Norwood Ohio plants." Cain stated that "such a delay constitutes a violation of Section 8(b)(3) of the Act." Cain asked the Union to "reconsider its position." Cain warned that "if the Union has not voted upon the final offer by"

February 24, the Employer would take "appropriate" action. Cain received no response to his February 13 letter and wrote Johnston and Richardson on February 26:

[W]e have reluctantly reached the conclusion that either we are at impasse and/or you are engaged in an unlawful refusal to bargain so that you can engage in pool voting at three plants whose contracts expire over an eight month span. In either event, it does not appear fruitful to engage in further bargaining. This letter is also to advise you that the Company intends to implement in full its last, best and final offer [on March 9].

In the meantime, on January 29, the parties had commenced separate contract negotiations for Norwood. On February 12, Employer Labor Relations Manager Hackney apprised Union Representative Richardson:

[We] believe your Union is engaged in a bad faith refusal to bargain by stalling negotiations at the Norwood and Lockland plants until June 1990 when the Middletown Ohio contract expires. You might wish to advise your members now to be prepared for a lockout or other appropriate action on the part of the Company after this contract expires on March 7, or any new date extended by agreement, if no new contract has been agreed upon.

And, the Employer similarly notified the Norwood employees on February 13:

[It] is our opinion that we would have an excellent chance of reaching a settlement in Norwood prior to the expiration date of the existing contract if Norwood was not involved in the Union's coordinated bargaining efforts. There are significant differences among Lockland, Middletown and Norwood in terms of operations and in terms of issues or potential issues. We must bargain at Norwood based on the issues here and not based on issues at Lockland or Middletown. We have notified your Union that the Company is prepared to lock out or take other appropriate action if the Union is unwilling to meet or if very significant progress in negotiations is not made by the agreed upon expiration date.

The Employer locked out the Norwood employees on March 24. Unfair labor practice charges were filed by the Union. The Board's Regional Director found that the "Employer's lockout was not unlawful" and, consequently, no claim is made here with respect to that lockout. The Employer locked out the Lockland employees on April 8. The Employer notified its Lockland employees:

[We] have reluctantly concluded that a lockout is necessary because we have been unable to conclude a new labor contract and because some employees have engaged in a production slowdown. In addition, a number of incidents have occurred which cause us to suspect that some employees have engaged in sabotage. We believe it is not possible to conclude a new contract because of the UPIU's unlawful refusal to bargain and this includes the pooled voting procedure.

On April 12, 4 days after the Lockland lockout and some 12 days before negotiations were to commence for Middletown, Richardson wrote Hope:

[The] Union is ready and willing to negotiate in good faith with the Company for a fair and equitable labor agreement at this location [Lockland]. If you believe that negotiations would be of further benefit to the two parties, please advise. Contact me at your earliest convenience.

Later, on April 29 and May 5, the parties had two "off the record" meetings. Hope explained:

I [then] indicated that we were going to effect the premium pay buyout and that they had to posture themselves to accept that . . . we were going to have a comprehensive medical and ppo plan . . . we were going to have a four-tour operation in the carton plant.

The parties thereafter held their 15th bargaining session for Lockland on May 11. This was the first "on the record" meeting since February 7. Hope testified that "this was the first time, going all the way back to September 29, that the Union finally said they would agree to a premium pay buyout." The Union still did not address at this meeting the Employer's comprehensive medical plan; "their proposal was still the retention of first dollar coverage." At the 16th bargaining session on May 15, as Hope recalled, "this was the first time [the Union] had agreed to, if you will, seriously consider the Company's proposal" pertaining to a comprehensive medical plan. Nevertheless, as the bargaining notes show, Richardson stated that "we are way apart" and no new meeting date was set.

The parties met again on June 13, July 12 and 30 and finally reached separate agreements for Lockland, Middletown and Norwood. Following ratification proceedings, Johnston notified the International and commented: "This completes the coordinated pool consisting of Locals, 98, 1009, and 1973."

On this record, I find and conclude that the Employer on February 26 correctly

reached the conclusion that either we are at impasse and/or you are engaged in an unlawful refusal to bargain so that you can engage in pool voting at three plants whose contracts expire over an eight month span. In either event, it does not appear fruitful to engage in further bargaining.

The Union had repeatedly resisted efforts to meet more frequently; had repeatedly refused to address key employer proposals pertaining to premium pay buyout and comprehensive medical insurance which had been on the table since September 29; and had belatedly and in bad faith advanced a detailed information request for purposes of delay. As noted, Richardson could not credibly explain why he had waited until the 14th bargaining session to request this type of information. Richardson admittedly did not previously apprise the Employer that such a detailed information request would be forthcoming. Richardson admittedly did not tell the Employer on February 7 "why" he "needed each of the items listed." And, Richardson was at a loss to explain the relevance of various items of requested information, and the Employer concededly had already supplied some of this requested information. Moreover, as Hope testified, the Union, during the remainder of 1990, had made no reference to or proposal predicated upon this requested information.

In short, after the 14th bargaining session, the Employer correctly concluded that the parties were either at impasse or, alternatively, the Union was engaging in conduct which was preventing the parties from either reaching agreement or a genuine impasse. Under the circumstances present here, the Employer was privileged to unilaterally implement "his pre-impasse proposals" because there was "no realistic possibility that continuation of discussion at that time would be fruitful." See *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir.). In fact, it took this March 9 implementation at Lockland, a March 24 lockout at Norwood and an April 8 lockout at Lockland to get the Union to even address at the bargaining table, some 2 months after the implementation, the Employer's premium pay buyout and comprehensive insurance proposals.

The Employer is not otherwise charged here with bad-faith bargaining or discriminatory conduct. The record makes clear that the Employer bargained in good faith during the some 20 bargaining meetings for Lockland. The Employer, in an attempt to get the negotiations to move, often had to "bargain against its own paper" or proposals. The Employer's related bargaining conduct and lockout at Norwood are also not challenged here. Accordingly, as found above, the Employer's March 9 implementation at Lockland has not been shown to be unlawful. Consequently, the Employer's April 8 lockout at Lockland "in furtherance of" or "support of" this implementation has not been shown to be unlawful as alleged. I would therefore dismiss the allegations of the "CA" complaint.¹⁵

CONCLUSIONS OF LAW

1. The Respondent and Charging Party Unions are labor organizations as alleged.

2. The Respondent and Charging Party Employer is an employer engaged in commerce as alleged.

3. The Respondent Unions have violated Sections 8(b)(3) and 8(d) of the Act by adopting, adhering to, and maintaining a pooled voting contract ratification procedure because the pool's structure and operation impermissibly impose extraneous nonbargaining unit considerations into the collective-bargaining process, that is, its structure and operation permit wholly separate bargaining units, each voting on its own separate contract, to effectively veto another bargaining unit's contract on the basis of extraneous considerations having no direct bearing on the substantive terms of the other unit's contract.

4. General Counsel has failed to prove that Respondent Employer violated Section 8(a)(1), (3), and (5) of the Act as

¹⁵ In view of my recommended disposition of the "CA" case allegations, it would seem unnecessary to consider further the evidence pertaining to the production slowdown and acts of sabotage at Lockland. As noted, General Counsel only alleges the Lockland lockout to be unlawful because it was "in support of" the earlier implementation which I have found to be lawful. In any event, the evidence adduced pertaining to slowdown and sabotage activities at Lockland, summarized above, is undenied and credible. Under the circumstances, I find that the Employer had at all times pertinent here a good faith belief that Lockland unit employees were engaging in slowdown and sabotage activities. Consequently, the Employer's assertion of this misconduct as a reason for its lockout does not, on this record, provide any independent basis for finding the lockout to have been discriminatorily motivated.

alleged in the consolidated “CA” case and those allegations will be dismissed.

5. The unfair labor practices found herein affect commerce as alleged.

REMEDY

To remedy the unfair labor practices found above, Respondent Unions will be directed to cease and desist from engaging in the conduct found unlawful and to post the attached notice. Affirmatively, Respondent UPIU will again be directed to rescind section 4 of article 15 of its constitution providing for such pooled voting contract ratification procedures. Since contracts at all three units have been ratified and executed, further affirmative remedial provisions in this and related respects would seem unnecessary. See *International Paper*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁶

ORDER

The Respondents, United Paperworkers International Union, AFL-CIO, and its, affiliated Locals 1009, 1973, and 98, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Jefferson Smurfit Corporation, as the exclusive bargaining agents of separate appropriate units of its employees, by adopting, adhering to and maintaining a pooled voting contract ratification procedure, because the pool’s structure and operation impermissibly impose extraneous nonbargaining unit considerations into the collective-bargaining process, that is, its structure and operation permit wholly separate bargaining units, each voting on its own separate contract, to effectively veto another bargaining unit’s contract on the basis of extraneous considerations having no direct bearing on the substantive terms of the other unit’s contract.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Respondent United Paperworkers International Union, AFL-CIO, will be directed to rescind Section 4 of Art. 15 of its constitution providing for such pooled voting contract ratification procedures.

¹⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Post at their business offices and meeting halls copies of the attached notice marked “Appendix.”¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the allegations of the complaint in consolidated Case 9-CA-27380 be dismissed.

¹⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we have violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Jefferson Smurfit Corporation, as the exclusive bargaining agents of separate appropriate units of its employees, by adopting, adhering to and maintaining a pooled voting contract ratification procedure, because the pool’s structure and operation impermissibly impose extraneous nonbargaining unit considerations into the collective-bargaining process, that is, its structure and operation permit wholly separate bargaining units, each voting on its own separate contract, to effectively veto another bargaining unit’s contract on the basis of extraneous considerations having no direct bearing on the substantive terms of the other unit’s contract.

United Paperworkers International Union, AFL-CIO, will rescind section 4 of article 15 of its constitution providing for such pooled voting contract ratification procedures.

UNITED PAPERWORKERS INTERNATIONAL
UNION, AFL-CIO, AND ITS LOCALS 1009,
1973 AND 98